

STATE OF MICHIGAN
COURT OF APPEALS

DAVID FREDERICK ARBOGAST

Petitioner-Appellant,

v

BELINDA KAY HUGHES-ARBOGAST,

Respondent-Appellee.

UNPUBLISHED

April 14, 2011

No. 294797

Oakland Circuit Court

LC No. 2004-701650-DM

Before: FORT HOOD, P.J., and TALBOT and MURRAY, JJ.

PER CURIAM.

David Frederick Arbogast challenges the trial court order finding him in contempt for failing to comply with a divorce judgment. Specifically, the court determined that Arbogast had a child support arrearage and had failed to pay Hughes-Arbogast the proceeds from the sale of a vehicle. The court awarded a money judgment and attorney fees to Hughes-Arbogast. We affirm.

The parties were divorced in 2005, and are the parents of one minor child. In accordance with the judgment, Arbogast was to remit \$40 a week in child support. Child support was to begin accruing when Hughes-Arbogast vacated the marital home, but payments would not initiate until the residence was sold. Following the sale of the marital home, Hughes-Arbogast's vehicle was to be paid off from the proceeds. Any additional monies realized from the sale of the home were awarded to Arbogast, who was to be responsible for all of the mortgage, taxes, insurance, upkeep, repairs, and maintenance on the property.

Based on Arbogast's failure to fulfill his obligations under the judgment, Hughes-Arbogast filed several motions for orders to show cause. Arbogast testified that he was unable to sell the home and it was eventually the subject of foreclosure. Arbogast asserted various efforts undertaken to sell the home and testified that he remitted the mortgage payments until June 2006, when the bank rejected subsequent payments based on a \$12,000 tax delinquency on the property. The home was ultimately sold at a sheriff's sale for \$160,000, resulting in a \$68,000 deficiency. Although funds were not available from the sale of the marital home to pay off the outstanding balance on Hughes-Arbogast's vehicle, Arbogast was able to sell the vehicle on the internet, realizing a profit of \$2456.10, which Arbogast retained. The trial court also found that child support in the amount of \$8480 had accrued since June 2006. Two of Arbogast's child support payments, totaling \$480, were returned for insufficient funds, and his child support arrearage was calculated to be \$4937.40.

The decision to hold a party in contempt is reviewed for an abuse of discretion, with questions of law reviewed de novo.¹ Factual findings are reviewed for clear error.² The willful failure to pay child support arrears is punishable by contempt.³ The court also has the power to punish a party by fine or imprisonment for the “nonpayment of any sum of money which the court has ordered to be paid.”⁴

Arbogast contends that the court’s findings were clearly erroneous and that the court abused its discretion in finding him in contempt. The fact that Arbogast allowed the marital home to go into foreclosure is undisputed. Because the home was sold at a loss, proceeds were not available to pay off Hughes-Arbogast’s vehicle. It was demonstrated that Arbogast also failed to pay child support as specified in the consent judgment. From entry of the judgment in 2005, Arbogast repeatedly sought to avoid complying with the terms of the judgment despite having an income that should have been sufficient to support himself and satisfy his obligations. The trial court had the opportunity to judge the credibility of the witnesses firsthand and decided that Arbogast’s testimony regarding his efforts and related events lacked credibility. Our review of the record reveals no basis to disturb the trial court’s ruling.

The court also ordered Arbogast to remit payment \$6660.15 in fees to Hughes-Arbogast’s attorney. Attorney fees may be ordered if necessary to enable a party to prosecute or defend an action, or if a party is forced to incur such expenses as a result of the other party’s unreasonable conduct.⁵

Sufficient evidence existed to support the trial court’s findings that Arbogast’s unreasonable conduct forced Hughes-Arbogast to incur attorney fees. Although Arbogast had sufficient income to comply with the provisions of the divorce judgment, he purposefully engaged in behavior and concocted excuses to avoid his obligations. Hearings were repeatedly adjourned and Hughes-Arbogast had to file four separate motions for orders to show cause. As the court’s order for attorney fees was supported by the evidence, it was not an abuse of discretion.

¹ *Johnson v White*, 261 Mich App 332, 345; 682 NW2d 505 (2004).

² *In re Contempt of Henry*, 282 Mich App 656, 668; 775 NW2d 44 (2009).

³ See MCL 552.631(1), MCL 552.633, MCL 552.635; *Rohloff v Rohloff*, 161 Mich App 766, 770-772; 411 NW2d 484 (1987).

⁴ MCL 600.1701(e).

⁵ MCR 3.206(C)(2); *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005); *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992).

Affirmed. As the prevailing party, Hughes-Arbogast may tax costs.⁶

/s/ Karen M. Fort Hood

/s/ Michael J. Talbot

/s/ Christopher M. Murray

⁶ MCR 7.219.